

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BETHANY R. SCAER and STEPHEN
SCAER,

Plaintiffs,

v.

CITY OF NASHUA; JAMES W.
DONCHESS, Mayor, City of Nashua, in
his official and individual capacities;
JENNIFER L. DESHAIES, Risk
Manager, City of Nashua, in her official
and individual capacities,

Defendants.

Case No.

DECLARATION OF BETHANY R. SCAER

I, Bethany R. Scaer, declare the following based on my personal knowledge:

1. I have lived in Nashua, New Hampshire for three decades. My husband, Stephen Scaer, and I raised two daughters in Nashua.

2. I am active in both state politics and local Nashua politics. As part of my activism, I write for *GraniteGrok*: a New England political website advocating limited government and the defense of liberty. I speak at meetings of Nashua's Board of Aldermen and Board of Education and have testified before New England legislatures about proposed bills. My husband is a Republican candidate for state senate this year, and he also ran back in 2022. I am involved in his campaigns.

3. I am a proponent, among other things, of gender-critical feminism, parental rights, women's sex-based rights, legislation restricting pediatric gender medicine, the Pro-Life movement, and the freedoms protected in the Bill of Rights. I have promoted these positions and criticized Nashua leaders who oppose them through my writing and activism. I have expressed criticisms of Defendant James Donchess, Nashua's mayor and a registered Democrat, repeatedly.

4. I am aware that the City of Nashua, New Hampshire has a pole in front of its city hall, which people can use to fly a flag in support of cultural heritage, observe an anniversary, honor an accomplishment, or support a worthy cause.

5. Nashua's website, Defendant Jennifer L. Deshaies, and other Nashua officials all referred to this pole as the "Citizen Flag Pole" (or "Citizen's Flag Pole") for years, including in correspondence with me about flag applications. I am aware that Defendant Deshaies used this title in correspondence with flag applicants as late as December 2023.

6. Exhibit A is a true and correct copy of Nashua's website page about the Citizen Flag Pole, as of October 12, 2020. Nashua later revised this webpage. Exhibit B is a true and correct copy of Nashua's revised webpage about the pole, as of July 18, 2024. The revised version of the webpage is also available at <https://perma.cc/QU88-6UWY>.

7. I have applied to use the Citizen Flag Pole multiple times since Nashua established its flag program in 2017. I lived in Nashua throughout this period and often saw the flags in front of city hall. I have attended at least six flag-raising

ceremonies and organized some of those ceremonies. I have also reviewed records about flag applications disclosed by Nashua in response to requests under the New Hampshire Right-to-Know Law. Through all of this, I am very familiar with the flag application process.

8. I am aware that those wishing to use the pole must submit a Special Events Application to the Risk Manager, who checks to ensure that no one already reserved the Citizen Flag Pole for the time period requested. Applicants also must supply the physical flag (although if the city already owns the flag at issue, this flag can be used), pledge to abide by local ordinances, and indemnify the city in the event of damage. Once a flag has finished flying on the pole, applicants can then pick up the flag to take home—as the flag remains their property.

9. I am aware that the Citizen Flag Pole flies approximately ten flags a year. The city's default is to have each approved flag fly for a week, from Saturday, Sunday, or Monday to Friday.

10. I am aware that short ceremonies at the City Hall Plaza often—but do not always—accompany flag raisings. Applicants often raise the flag themselves, using a tool borrowed from the city. Local politicians sometimes attend or even speak at flag-raising ceremonies. Politicians can use these ceremonies as an opportunity to interact with the local group of constituents raising the flag and win favor with voters. If applicants wish to hold a ceremony, they must describe the details of this ceremony (such as the number of expected attendees and the extent to which it will obstruct the sidewalk) on their application.

11. I am aware that some groups apply to Nashua every year to fly a flag in celebration of an anniversary. Examples include flags in honor of Pride Month, Indian Independence Day, Brazilian Independence Day, Greek Independence Day, International Francophonie Day, and the anniversary of the foundation of Nashua's Lions Club.

12. I am aware that other flags have flown sporadically or just once. Examples include the Kurdistan Flag, the Christian Flag, the Lutheran Flag, the Porcupine Party, and flags in support of National Recovery Month and organ donation.

13. I am aware that, until May 2022, Nashua had no written policy document governing what could be displayed on the Citizen Flag Pole, though Nashua's website page described the Citizen Flag Pole program briefly.

14. Exhibit C is a true and correct copy of Special Events Procedures, as of October 12, 2020.

15. I am aware that on May 11, 2022—just a week after the U.S. Supreme Court unanimously decided *Shurtleff v. City of Boston*, 596 U.S. 243 (2022)—the City of Nashua issued a written flag policy on its website.

16. Exhibit D is a true and correct copy of Nashua's flag pole policy.

17. I am aware that, at this time, Nashua also revised its Special Events Procedures, to include a section on "Request[s] for Use of the City Flag Pole."

18. Exhibit E is a true and correct copy of Nashua's revised Special Events Procedures, as of July 18, 2024. The revised Procedures are also available at <https://perma.cc/VV5V-YTRK>.

19. I first applied to use the Citizen Flag Pole in October 2017, when I was allowed to fly the Luther Rose Flag in honor of the 500th anniversary of the Protestant Reformation. I provided the flag and raised it myself, using a tool borrowed from the city. Approximately six people attended the flag-raising ceremony—none of whom represented the city.

20. Nashua allowed me to fly my Lutheran Flag again in April 2021, for the 500th anniversary of the Diet of Worms: a crucial event in the history of the Protestant Reformation, at which Martin Luther refused to recant his theological views, despite the threats of Emperor Charles V. I consider the Diet of Worms to mark the beginning of religious freedom, without which the founding of American would be unimaginable. Less than a dozen people attended the flag-raising ceremony—none of whom represented the city.

21. In 2020, I received permission from the city to raise a Save Women's Sports Flag. In my granted application, I had planned to fly this flag for a week, from October 10 to October 16, leading up to a virtual fundraiser in support of the Save Women's Sports organization at the end of that week. On October 10, my husband and I raised the flag, using a tool borrowed from the city, without a ceremony but with two other people in attendance, holding signs.

22. A day later, on October 11, the city revoked its permission and took the flag down, after various people complained that the flag was supposedly “transphobic.” I do not know how many people complained about this flag, although I have read social media postings by one complainant: Brenna Connolly, head of the Greater Nashua Young Democrats.

23. On October 13, I appealed this removal to Mayor Donchess, unsuccessfully. Indeed, Defendant James W. Donchess publicly defended Nashua’s action and was involved in the flag’s removal. In an October 14 statement, Donchess stated that my flag was taken down because it “contain[ed] a discriminatory message toward the transgender community” and “Nashua is a welcoming community, in which we embrace all people and the contributions of all are celebrated and valued.”

24. On October 10—the day that I raised the Save Women’s Sports Flag—Nashua Alderwoman Jan Schmidt posted on her Facebook account, saying that “Beth’s hate flag” does not fit Nashua’s requirements to be flown in front of city hall. I believe this post is indicative of the conversations that occurred between Nashua officials that led to my flag being removed the next day.

25. Exhibit F is a true and correct copy of Alderwoman Schmidt’s post.

26. Nashua’s corporation counsel sent my lawyer a response to my appeal, in which the city of Nashua justified removing my flag by citing *Shurtleff v. City of Boston*, 928 F.3d 166 (1st Cir. 2019)—a case later overruled by the Supreme Court.

27. Exhibit G is a true and correct copy of Nashua's response to my appeal concerning the Save Women's Sports Flag.

28. I was allowed to fly a flag in honor of the ratification of the Nineteenth Amendment in August 2021. No representatives of the city attended the flag raising. Indeed, my husband and I were the only people present. After we raised the flag, I spoke about the importance of women's sex-based rights and how Mayor Donchess' gender-identity policies undermined these rights. A day later, I placed this speech online at both *GraniteGrok* and YouTube.

29. I was part of a group that flew the Christian Flag during Holy Week 2024. There was a small ceremony of less than a dozen people at which Hal Shurtleff—the plaintiff in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022)—and a local pastor both spoke about the need to reclaim America for Jesus Christ and criticized Nashua for flying flags that support progressive politics such as the Pride Flag while rejecting flags with conservative messages such as the Pro-Life Flag. No representatives of the city were present. The speeches at the ceremony later circulated online.

30. In May 2022, soon after the Supreme Court's decision in *Shurtleff*, 596 U.S. 243, I applied to again fly the Save Women's Sports Flag, to celebrate the 50th anniversary of Title IX, a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Defendant Deshaies and unnamed other persons denied this application. On appeal, Defendant Donchess upheld the denial.

31. Later in May 2022, a friend of mine, Laurie Ortolano, also applied to fly an iconographically different Save Women's Sports flag, which—unlike my flag—did not feature the words "Woman = Adult Human Female" on it. Defendant Deshaies denied Ortolano's application, too.

32. Based on my personal knowledge and records disclosed by Nashua in response to New Hampshire Right-to-Know requests. I am aware of only two flags that Nashua ever rejected prior to the issuance of the May 2022 flag policy: my Save Women's Sports flag in October 2020 and a Porcupine Flag (associated with both the Free State Project and the Libertarian Party) in February 2021. Nashua, however, allowed the Porcupine Flag to fly on three other occasions, in 2018, 2019, and 2020. The Save Women's Sports Flag, in comparison, was denied or removed all three times that I or Ortolano applied about it.

33. I am aware that since the issuance of the May 2022 flag policy, Nashua has rejected flag applications by several people other than myself—including one application by my husband, Stephen Scaer. I know that Nashua refused to fly a Pro-Life flag in November 2023 and again in May 2024, a Detransitioner Awareness flag in February 2024, and the Palestinian Flag in June 2024.

34. On May 27, 2024, I applied to fly the Pine Tree Flag on Saturday, June 15, to commemorate the 249th anniversary of the Battle of Bunker Hill (fought June 17, 1775). I intended to display this flag in honor of the Nashua soldiers who fought and died at the Bunker Hill.

35. Exhibit H is a true and correct copy of my Pine Tree Flag application and my correspondence with Defendants concerning this application.

36. I am aware that the Pine Tree Flag is a traditional American emblem, carried by New England troops during the early years of the American Revolution, including at Bunker Hill. The Pine Tree Flag is a key symbol of natural rights and resistance to tyranny. I have seen people fly the Pine Tree Flag all over New Hampshire, due to its importance to our state's history and the 1772 Pine Tree Riot, which occurred in Weare, New Hampshire.

37. On May 29, I received an email from Defendant Deshaies, denying my application. I appealed this decision on June 3. On June 4, Mayor Donchess upheld Deshaies' decision.

38. In the aftermath of Defendant Donchess' decision, I emailed the mayor's office, my local alderman Timothy Sennott), and various other Nashua leaders and press outlets about the city's rejection of the Pine Tree Flag. I complained that the city was doing nothing to observe the anniversary of Bunker Hill and remind Nashua leaders that June 17, 2025, next year, will be the battle's 250th anniversary. I also wrote about the flag's rejection at *GraniteGrok*.

39. Alderman Sennott responded to my email.

40. Exhibit I is a true and correct copy of my email chain with Alderman Sennott.

41. Exhibit K is a collection of photographs that fairly and accurately depicts the Pine Tree Flag, the Save Women's Sports Flag, and the Detransitioner Awareness Flag, that my husband or I applied to fly.

42. I intend to apply to fly additional flags on the Citizen Flag Pole, in order to express my views, if Nashua would permit this.

43. If permitted, I would fly the Pine Tree Flag next year on June 17, 2025: the 250th anniversary of the Battle of Bunker Hill. The Pine Tree Flag not only commemorates Nashua soldiers who risked and sacrificed their lives for freedom, but also celebrates the political philosophy of John Locke and the values of the American Revolution, such as limited government, divinely endowed rights, and the right of the people to rebel against tyrannical government. I embrace and would like to express all of these political messages. I believe, however, that applying to fly the Pine Tree Flag again would be futile, because Defendants would deny my application, just as they did this year.

44. I would also like to fly flags expressing my views on issues such as gender-critical feminism, parental rights, women's sex-based rights, pediatric gender medicine, abortion, and the freedoms protected in the Bill of Rights. Based on Nashua's previous flag denials, I reasonably believe that Defendants disagree with my views on these issues and would not allow me to fly flags of my own choosing about these issues.

45. If permitted, I would fly the Save Women's Sports Flag for the anniversary of Title IX next year. This flag expresses my viewpoint that women

have inalienable rights based on their biological sex that governments have a duty to protect and that allowing biological males to compete against women in sports denies women their rights and the equality due them under both the U.S. Constitution and Title IX. As a mother of two daughters who attended New Hampshire schools and competed in student athletics, ensuring that biological women can compete in safe and fair sports is important to me. I believe, however, that applying to fly the Save Women's Sports Flag again would be futile, because Defendants would deny my application, just as they did twice before.

46. If permitted, I would fly the Pro-Life Flag for the anniversary of the Supreme Court's *Dobbs* decision next year. This flag expressed my viewpoint that all humans, no matter their age or physical capabilities, are endowed by their Creator with natural rights, including the right to life. I believe, however, that applying to fly the Pro-Life Flag would be futile, because Defendants have twice denied applications from other Nashua residents to display the Pro-Life Flag.

47. Nashua has permitted me to fly some of the flags that I applied to display. However, if not for Defendants' policies, I would fly flags more often in the future and would be able to display a wider range of views through flags. Nashua's flag policy limits the viewpoints that I can express, the choice of flags and iconographies that I can display, and the frequency of my political expression.

48. I find it frustrating and degrading to have my flag requests denied by the city, especially when I see other residents being allowed to promote their flags and viewpoints. In seeing the flags that Nashua permits in front of city hall, I have

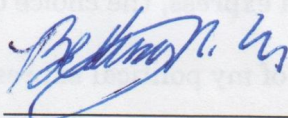
noticed that flags expressing majoritarian opinions—and especially the opinions of Nashua's political leaders—can fly while flags that express dissenting viewpoints, on both the right and the left, are rejected. It is also frustrating and degrading that city officials refuse to explain to me why my Pine Tree Flag application was really denied. This amounts to the erasure of both New Hampshire and American history.

49. I also think it is wrong for the city to revoke previously granted permission just because someone complains about a flag they disagree with. This amounts to city officials picking and choosing which citizens' views matter more. For example, I happen to disagree with the Pride Flag, but the city still flies it every year (or, for the first time in 2024, the variation called the Progress Flag). It is offensive to me to be told, in effect, that my views do not matter because I am a conservative Christian and a gender-critical feminist.

50. Unless I am able to obtain protection from the Court, I expect to make fewer or different flag applications to the city in the future, in order to avoid having my flag applications denied or revoked.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2024



Bethany R. Scaer